

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

16 CR. 436 (KMW)

-v- :

JAMES DAVID WILLIAMS,  
STEVEN BROWN, and :  
GERALD SEPPALA,

**AFFIRMATION**

Defendants. :

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WALTER MACK, an attorney duly licensed to practice law before the courts of the State of New York and this court, under the penalties of perjury, affirms as follows:

1. I represent the Defendant Steven Brown in the above-captioned matter. I also represent Richard W. Gates III in a criminal case pending in the United States District Court for the District of Columbia. United States v. Gates, No. 17 Cr. 201 (ABJ). This Affirmation is submitted in response to the Government's letter, dated November 20, 2017 ("Gvmt Ltr."), requesting a hearing pursuant to United States v. Curcio, 680 F.2d 881 (2d Cir. 1982).

2. The government notes that "the conduct for which Gates is charged in the District of Columbia is separate and apart from the charges pending in the instant action." (Gvmt's Ltr. at p. 1). However, because Mr. Brown and Mr. Gates know each other and had business dealings, the Government speculates that a "potential" conflict of interest might arise under certain hypothetical circumstances, "[h]owever unlikely," (Id. at 2) and "however remote" (Id. at 6), and that the Court should therefore hold a Curcio hearing.

3. Under the government's theory, the mere fact that two defendants have had a business relationship unrelated to the matters at issue in their respective cases triggers the need

for a Curcio hearing. I respectfully disagree, especially as the government concedes, it “does not, at present have reason to believe Gates was directly involved in, or was a victim of the criminal conduct at issue in this case.” (Gvmt Ltr. at 2). Thus, neither defendant is presently expected to be a witness in the other’s case. See Excerpt of Transcript of Motions Hearing Held before the Hon. Judge Amy Berman Jackson, U.S.D.J. at pg. 17 (attached as Exh A).

4. I am aware of my obligations under both Rule 1.7 of the Rules of Professional Conduct in New York State and Rule 1.7 of the Rules of Professional Conduct in the District of Columbia, which are substantially similar, and I have concluded that I am not conflicted in either matter as the cases now stand. My representation of both defendants in their separate cases does not presently require me to take an action to advance a position adverse to the interests of the other – and it is difficult to conceive of such a situation arising in the future. Nonetheless, proceeding somewhat speculatively, the government has submitted its letter requesting a Curcio hearing, and in the process has created a firestorm of media interest and adverse publicity inimical to both defendants’ fair trial interests.

5. Nevertheless, I have discussed with Mr. Brown and Mr. Gates the speculations engaged in by the prosecutors and the theoretical scenarios in which they imagine purported future conflicts, and I have encouraged both Mr. Brown and Mr. Gates to consult with independent counsel, raise whatever questions or concerns they may have with whomever they wish, and decide whether to terminate my representation or provide informed consent to my continuation as counsel. I, for my part, reasonably believe that I will be able to provide diligent and competent representation to each defendant.

6. I arrive at this conclusion based on the fact that the two criminal actions involve different prospective criminal law theories by prosecutors empowered with different jurisdictional powers, in different judicial districts, in separate courtrooms (likely at different times), with different witnesses and exhibits. While Mr. Brown and Mr. Gates are friends with past business associations, their cases involve different issues and there is no perception by them, or by me, of any competing interests.

7. Although the government raises the hypothetical prospects of one defendant being called to testify against the other (speculation that has generated much media fanfare to the detriment of both defendants), I have to question whether such an event is even likely under the current situation when neither defendant has been identified as a subject of the other's Grand Jury investigation and both would be extremely unlikely to testify against the other, even if immunized. Even in such an unlikely scenario, based on my experience in other cases, stipulations or other procedural means are available to the trial judge, such as independent legal counsel responsiveness, that could overcome whatever conflicts might arise, rather than interfering with the defendants' Sixth Amendment right to chosen counsel.

8. However, out of an abundance of caution and to address any concern the Court might have about hypothetical future scenarios giving rise to a conflict, no matter how farfetched, I have advised both Mr. Brown and Mr. Gates, as noted above, to seek independent legal advice, to carefully consider the questions raised, and for each to make his own decision whether to proceed with me as counsel.

9. Most disturbing about the speculation underlying the government's application for a Curcio hearing, however, beyond the publicity that threatens to taint the jury pool and the

prospect of fair trials whether in the Southern District of New York or in the District of Columbia, are the highly intrusive proposed questions presented by the government to the District Court. If the Court does believe it prudent to proceed with the Curcio hearing, we ask that the questioning by the Court be simple and direct, to wit:

a. Are you aware of the government's request that the Court question you about Mr. Mack's representation of both you and Mr Gates?

b. Do you understand that the government claims that there is a possibility that your best interests could conceivably, in some way, be in conflict with those of Mr. Gates, such as if one of you is called to testify in the other's case?

c. Have you discussed this subject not only with Mr. Mack but with a lawyer independent of him?

d. Have your questions and whatever concerns you may have been satisfactorily clarified or explained?

e. Are there any questions or more information you would like to ask of the Court?

f. Have you had sufficient time to consider and discuss this topic?

g. Have you decided to proceed with Mr. Mack as your defense counsel?

10. I stand by, as does as my client, to respond to any questions or concerns of the Court.

Dated: New York, New York  
November 30, 2017

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/s/  
Walter Mack, Esq.  
Doar Rieck DeVita Kaley & Mack  
217 Broadway, Suite 707  
New York, New York 10007  
212-619-3730  
*Attorney for Defendant Steven Brown*

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

United States of America,	) Criminal
	) No. 17-201
Plaintiff,	)
	) Motions Hearing
vs.	)
	) Washington, DC
PAUL JOHN MANAFORT, JR.	) November 21, 2017
RICHARD W. GATES, III,	) Time: 1:00 p.m.
	)
Defendants.	)

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TRANSCRIPT OF MOTIONS HEARING  
HELD BEFORE  
THE HONORABLE JUDGE AMY BERMAN JACKSON  
UNITED STATES DISTRICT JUDGE

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A P P E A R A N C E S

For the Plaintiff: GREG D. ANDRES,  
Senior Assistant Special Counsel  
ANDREW WEISSMANN  
KYLE R. FREENY  
U.S. Department of Justice  
Special Counsel's office  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530  
202-514-1746

For Defendant Manafort: KEVIN M. DOWNING  
815 Connecticut Avenue, N.W.  
Suite 730  
Washington, D.C. 20006  
(202) 754-1992

THOMAS EDWARD ZEHNLE  
Miller & Chevalier, Chartered  
900 Sixteenth Street, NW  
Washington, DC 20006  
(202) 626-5800  
Email: Tzehnle@milchev.com

1 For Defendant Gates: SHANLON WU  
2 Wu, Grohovsky & Whipple  
3 1300 Pennsylvania Avenue, NW  
4 Suite 700  
Washington, DC 20004  
(202) 204-3053  
Email: Swu@dcwhitecollar.com

5 ALSO PRESENT: Andre Sidbury, Pretrial Officer

6  
7 Court Reporter: Janice E. Dickman, RMR, CRR  
8 Official Court Reporter  
9 United States Courthouse, Room 6523  
333 Constitution Avenue, NW  
Washington, DC 20001  
202-354-3267



1 THE COURT: All right. I know we're bearing down  
2 on Thanksgiving here.

3 MR. WU: That's true, Your Honor. I may have been  
4 overly optimistic. I forgot about that.

5 THE COURT: Why don't we say December 4th. That  
6 gives you all next week and then -- so Monday, December 4th,  
7 opposition will be due.

8 I'm not going to ask you any questions, but I do  
9 have a couple of questions for the prosecution about it.

10 I understand in the motion that you've set forth  
11 some financial relationships between defendant Gates and the  
12 defendant in the New York matter. But I really had some  
13 difficulty discerning what is the conflict that actually  
14 exists on the part of the lawyer. You say on, page 2, that  
15 the conduct in the two cases is separate and apart, but you  
16 posit, on page 3, that Gates might have knowledge about the  
17 allegations against Brown and he could be a potential  
18 witness in the case against Brown. And then you say Brown  
19 might have knowledge about Gates and it's at least possible  
20 that Gates or Brown could become a witness for the  
21 government, or that information Mr. Mack learned from Brown  
22 or Gates could be relevant to the defense of the other. And  
23 then you say however unlikely those propositions are, that I  
24 should assert myself into the attorney-client relationship  
25 in an abundance of caution.



1           So I wasn't sure why you're talking about  
2 possibilities. Is Mr. Brown a witness in your case?

3           MR. ANDRES: He's not, Judge.

4           THE COURT: And is Mr. Gates a witness in the  
5 New York case?

6           MR. ANDRES: Not that I'm aware of. He's not, Judge.

7           THE COURT: All right. So then what's the conflict  
8 you want me to address?

9           MR. ANDRES: It, again, Judge, is a potential  
10 conflict. It's not necessarily one that exists. But  
11 certainly it's one that could develop over time; that is,  
12 over the course of either of these cases. It's possible  
13 that either could be called as a witness in either case.

14           So our understanding from the prosecutors in the  
15 Southern District case is that there's information that Mr.  
16 Gates was involved in the transactions that underlie the --  
17 that indictment; that is, he's had money transferred into  
18 one of the entities involved with that investigation. He  
19 certainly could be a victim of that scheme, or he could be a  
20 co-conspirator. The government isn't alleging either. But  
21 what we want to avoid is the situation six months down the  
22 line where Mr. Gates learns that there's an issue with  
23 respect to his representation and it's not something that  
24 was addressed ahead of time.

25           So it absolutely only relates to the potential

1 conflict. As we mentioned in our filing, the prosecutors in  
2 the Southern District of New York have also filed a letter  
3 with Judge Wood, similar to this one, to have a hearing.

4 THE COURT: But, I guess that case is supposed to  
5 go to trial in March.

6 MR. ANDRES: Correct.

7 THE COURT: I don't understand why we're talking  
8 about somebody who could suddenly turn out to be a witness  
9 in a case where they've already had their grand jury  
10 investigation, they've already brought an indictment, and  
11 they know who they're planning to call as a witness.

12 MR. ANDRES: Judge, because as we read the law, it  
13 requires the government to bring forward, or for the Court  
14 to address even the potential conflict at the earliest  
15 potential stage. So even, again, that it's only a potential  
16 conflict, as we read the controlling law, it requires an  
17 inquiry to Mr. Gates that he's aware of this even potential  
18 conflict.

19 THE COURT: All right. Well, one thing I will ask  
20 the government to do, at any time that you understand that  
21 there's been any ruling coming out of the New York Court, if  
22 you could provide -- you know, docket it, just file a notice  
23 that there's been some development, so that we can all be  
24 aware of it.

25 And I'll wait and see. I'm not going to ask Mr.

1 Wu to address it now. I'm sure you want to fully talk to  
2 Mr. Mack and figure out what your position is.

3 But, I just really didn't understand what you were  
4 trying to tell me. And you've already clarified a little  
5 bit, so that's helpful.

6 I don't have anything else that I need to talk  
7 about today. Is there anything else that the government  
8 needs to bring up at this time?

9 MR. ANDRES: Not from the government, Judge.  
10 Thank you.

11 THE COURT: Anything further for Mr. Gates?

12 MR. WU: Not for Mr. Gates.

13 THE COURT: Anything further from Mr. Manafort?

14 MR. DOWNING: No, Your Honor.

15 THE COURT: Okay. All right. Thank you very  
16 much, everybody.

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